STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 21, 2006
v	No. 258401 Antrim Circuit Court
WALTER EDWARD HARRINGTON, Defendant-Appellant.	LC No. 03-003686-FC

Before: Meter, P.J., Whitbeck, C.J., and Schuette, J.

PER CURIAM.

Defendant Walter Harrington appeals as of right his jury trial convictions for two counts of first-degree criminal sexual conduct[1] (CSC), and three counts of second-degree CSC.[2] The trial court sentenced Harrington to 15 to 40 years in prison on the first-degree CSC convictions and 10 to 15 years in prison on the second-degree CSC convictions. We affirm.

I. Basic Facts And Procedural History

The complainant in this case is Harrington's daughter, and one of the second-degree CSC convictions involves Harrington's son, on an alternative aiding and abetting theory. Both children testified that, while their mother was at work during the night, Harrington taught them about sex using magazines, books, and movies. The complainant explained that Harrington used his forefinger and middle finger to rub her vagina, and she described touching and rubbing Harrington's penis with her hands. She also recalled an incident where Harrington held a mirror to her vagina and "pull[ed] it open a little bit so that [she] could see the inside." The complainant further testified that Harrington licked her vagina, and she remembered licking Harrington's penis or touching it with her mouth, as well as him placing his penis inside her mouth. The complainant rubbed her brother's penis at Harrington's direction, and her brother touched her vagina at Harrington's direction as well.

[1] MCL 750.520b(1)(a) (victim under the age of thirteen).

[2] MCL 750.520c(1)(a) (victim under the age of thirteen).

During an interview with a Michigan State trooper, Harrington explained that he was trying to teach his children about sex using movies and books. Harrington admitted that he touched the complainant's vaginal area and let the children touch his penis. He also acknowledged that he allowed the complainant to touch his son's penis and permitted his son to touch the complainant's vaginal area. He similarly did not deny that the complainant had touched his penis with her mouth.

Defense counsel prepared his case believing that the complainant never received a medical examination. During voir dire, defense counsel questioned prospective jurors about the importance of a medical examination in a sexual assault case. He also theorized that the lack of such an examination affected the complainant's credibility during his opening statement. During the second day of trial, the prosecutor learned that the complainant had received a medical examination. Harrington moved for a mistrial, which motion the trial court denied because of double jeopardy concerns and lack of manifest necessity.

II. Harrington's Motion For Mistrial

A. Standard Of Review

This Court reviews a trial court's denial of a motion for mistrial for an abuse of discretion.[3] An abuse of discretion occurs "when an unprejudiced person, considering the facts on which the trial court acted, would conclude that there was no justification or excuse for the ruling."[4]

B. Medical Examination

1. Voir Dire And Defense Counsel's Opening Statement

During voir dire, defense counsel asked prospective jurors whether they would be concerned if a sexual assault victim did not receive a medical examination. Responses varied, and it does not appear as if counsel's questions or the prospective jurors' answers affected jury selection one way or another.

During his opening statement, defense counsel attacked Harrington's "so-called confession," challenging the interrogation techniques used and accusing the trooper of lying. Counsel vigorously attacked the credibility of Harrington's son and the complainant, accusing them of lying, being manipulated, and claiming that the complainant kept changing her story. Counsel challenged the credibility of nearly every prosecution witness and discussed the burden of proof and reasonable doubt. He made one short statement, consisting of six sentences, about the lack of a medical examination. Defense counsel basically stated that the lack of a medical examination showed that the police did not believe the complainant's allegations, which is essentially another method of challenging the complainant's credibility.

---

[3] *People v Lett*, 466 Mich 206, 218; 644 NW2d 743 (2002).

[4] *People v Patmore*, 264 Mich App 139, 149; 693 NW2d 385 (2004).

2. Manifest Necessity

Harrington was prepared to consent to a mistrial, stipulate that manifest necessity existed and waive any double jeopardy claims. After a continuance, the prosecutor ultimately stated that he would not oppose a mistrial. However, a trial court has considerable deference in its decision regarding the existence of manifest necessity in deciding whether to declare a mistrial.[5] "'Although there is no specific test for what constitutes "manifest necessity,"'" it generally exists when there are "'sufficiently compelling circumstances that would otherwise deprive the defendant of a fair trial or make its completion impossible.'"[6]

After reviewing defense counsel's voir dire questions and opening statement, we conclude that his theory about the lack of medical examination was minor. Further, no evidence of the medical examination or report was ever introduced into evidence. As far as the jury knew, no such examination ever occurred. Harrington has failed to show that the discovery of the report of the medical examination deprived him of a fair trial. It was one of many theories raised in defense, and a minor theory at best.

3. Double Jeopardy

Both the United States and Michigan constitutions contain a Double Jeopardy Clause that prohibits a defendant from being twice placed in jeopardy for the same offense.[7] However, a defendant waives his right to double jeopardy protections if he requests or consents to a mistrial, or if it is granted for manifest necessity.[8] Harrington relies on *People v Kimble*,[9] arguing that the trial court's denial of his motion for mistrial constitutes an abuse of discretion because it made a mistake of law regarding the application of double jeopardy. However, we distinguish *Kimble* because it involved the plain error doctrine and an error that seriously affected the "integrity or public reputation of judicial proceedings."[10] Harrington also relies on *People v Lukity*[11] for the same principle. However, *Lukity* involved the admission of evidence that was inadmissible as a matter of law, rather than a motion for mistrial.[12] Although Harrington is correct that the trial court relied in part on a mistake of law regarding double jeopardy principles, it also concluded

---

[5] *People v Hicks*, 201 Mich App 197, 200-201; 506 NW2d 269 (1993), rev'd in part on other grounds 447 Mich 819 (1994).

[6] *People v Tracey*, 221 Mich App 321, 326; 561 NW2d 133 (1997), quoting *People v Rutherford*, 208 Mich App 198, 202; 526 NW2d 620 (1994).

[7] US Const, Am V; Const 1963, art 1, § 15; *People v Echavarria*, 233 Mich App 356, 362; 592 NW2d 737 (1999).

[8] *Lett*, *supra* at 215.

[9] *People v Kimble*, 252 Mich App 269, 280; 651 NW2d 798 (2002).

[10] *Id*. at 279, citing *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999)

[11] *People v Lukity*, 460 Mich 484, 493-494; 596 NW2d 607 (1999).

[12] *Id.* at 491.

that manifest necessity did not exist. We therefore conclude that the trial court did not abuse its discretion in denying Harrington's motion for mistrial.

III. Ineffective Assistance of Counsel

A. Standard Of Review

Whether a defendant has been denied effective assistance of counsel is a mixed question of fact and constitutional law.[13] This Court must first find the facts and then decide whether those facts constitute a violation of the defendant's constitutional right to effective assistance of counsel.[14] This Court reviews a trial court's findings of fact for clear error and questions of constitutional law de novo.[15]

B. Suspension From The Practice Of Law

Harrington first argues that he was denied the effective assistance of counsel per se because one of his attorneys was suspended from the practice of law. As the United States Supreme Court recognized in *United States v Cronic*, there exist some circumstances of such a magnitude that, although counsel is available to assist the accused, "the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial."[16] Here, Harrington's attorney was suspended for a 30-day period, and reinstatement did not occur because he failed to send letters to his clients or file the required affidavit with the Michigan Supreme Court. The suspended attorney only acted as lead counsel at the second *Walker* hearing and a competency hearing. Harrington's other attorney acted as lead counsel at the preliminary examination, other pretrial hearings, and trial. After the suspension was discovered and the suspended attorney withdrew, Harrington agreed that another competency hearing was not necessary, and pending review of the transcript from the second *Walker* hearing, the trial court was willing to accommodate a request for a third one.

The mere fact that an attorney was practicing law while suspended does not warrant reversal per se.[17] In *Pubrat*, the Michigan Supreme Court held that a criminal defense attorney's continuing practice of law while under suspension did not necessarily mean that the representation fell below the objective standard of reasonableness.[18] "The possibility that an attorney's suspension may sometimes reflect on the effectiveness of representation does not

---

[13] *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002).

[14] *Id*.

[15] *Id*.

[16] *United States v Cronic*, 466 US 648, 659-660; 104 S Ct 2039; 80 L Ed 2d 657 (1984), discussing *Powell v Alabama*, 287 US 45; 53 S Ct 55; 77 L Ed 158 (1932).

[17] *People v Pubrat*, 451 Mich 589, 601; 548 NW2d 595 (1996).

[18] *Id*. at 600.

justify a rule of reversal per se or automatic remand for a hearing on effectiveness."[19] Therefore, Harrington was not denied the effective assistance of counsel per se by the suspended attorney's representation at the competency and *Walker* hearings.

C. Counsel's Relationship With The Trial Court Judge

Harrington also claims that he was denied the effective assistance of counsel because the trial court judge repeatedly accused counsel of being a liar, unethical, and a deliberate obstructionist. After reviewing the trial court's remarks in context, we find that there were strong expressions of frustration with defense counsel. Counsel arrived late for hearings and trial, failed to present a witness at a hearing instead of seeking adjournment, failed to file a trial brief in violation of a scheduling order, referred to inadmissible testimony during his opening statement, made an untimely objection to the prosecutor's closing argument, and failed to file proposed jury instructions. However, none of the trial court's comments were made in front of the jury.

Further, critical, disapproving, or hostile judicial remarks to counsel do not generally support a partiality challenge.[20] This Court has recognized that partiality is not established by a trial court's expressions of "impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women sometimes display."[21] Therefore, the trial court's arguably hostile remarks do not show partiality that constitutes a per se violation of Harrington's right to the effective assistance of counsel. Harrington has failed to show or otherwise explain how the poor relationship between his attorney and the trial court judge constitutes per se ineffective assistance of counsel. An appellant may not simply announce a position or assert an error and leave it to this Court to "'discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'"[22]

D. Harrington's Motion For Mistrial

Harrington also claims that the trial court's decision to deny his motion for mistrial is indicative of ineffective assistance of counsel. As is discussed above, this decision did not constitute an abuse of discretion, and we therefore find Harrington's argument to be misplaced.

---

[19] *Id*. at 601.

[20] *People v McIntire*, 232 Mich App 71, 104-105; 591 NW2d 231 (1998), rev'd on other grounds 461 Mich 147; 599 NW2d 102 (1999).

[21] *Id*. at 105.

[22] *People v Kevorkian*, 248 Mich App 373, 388-389; 639 NW2d 291 (2001), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

IV. Jury's Request To Review Testimony

A. Standard Of Review

We review a trial court's decision whether to read testimony to a jury for an abuse of discretion.[23]

B. MCR 6.414(H)

Harrington contends that the trial court abused its discretion in declining to read the complainant's testimony to the jury. MCR 6.414(H) provides:

> If, after beginning deliberation, the jury requests a review of certain testimony or evidence, the court must exercise its discretion to ensure fairness and to refuse unreasonable requests, but it may not refuse a reasonable request. The court may order the jury to deliberate further without the requested review, so long as the possibility of having the testimony or evidence reviewed at a later time is not foreclosed.

A trial court may order a jury to continue deliberating without reviewing requested testimony if it does not foreclose the possibility of reviewing the testimony later.[24]

The jury received the case and left the courtroom at 9:46 a.m. At 12:00 p.m., the trial court received a note requesting a transcript of the complainant's testimony. Although it was not possible to prepare a written transcript that day or even overnight, it would have been possible for the court reporter to read the testimony to the jury. The trial court instructed the jury that the transcript was not available and that it would be difficult to read parts of it, but it did not foreclose that possibility. It then asked the jurors to rely on their collective memory. The jury reached a unanimous verdict within less than two hours after requesting the transcript. Accordingly, we conclude that the trial court did not abuse its discretion when it denied the jury's request.

V. Harrington's Motion For In-Camera Review Of Privileged Records

A. Standard Of Review

We review for an abuse of discretion a trial court's decision on a defendant's request for in-camera review of privileged records.[25]

---

[23] *People v Howe*, 392 Mich 670, 675; 221 NW2d 350 (1974).

[24] *Howe*, *supra* at 677-678.

[25] *People v Fink*, 456 Mich 449, 458; 574 NW2d 28 (1998).

B. MCR 6.201

Harrington argues that the trial court abused its discretion in denying his request for in-camera review of the children's counseling records.

MCR 6.201(C)(2) requires a trial court to conduct an in-camera inspection of privileged records "[i]f a defendant demonstrates a good-faith belief, grounded in articulable fact, that there is a reasonable probability that records protected by privilege are likely to contain material information necessary to the defense[.]"[26]

Harrington contends that the records contain inconsistent statements regarding the allegations or demonstrate the children's suggestibility. The children's mother waived the client/counselor privilege regarding Harrington's son and the complainant, but maintained the privilege with respect to two younger siblings who did not testify at trial. Apparently, during counseling, Harrington's son stated that Harrington also engaged in sexual conduct with his younger siblings and made him touch their "private parts" as well. Harrington's son stated that the complainant had also witnessed this conduct, but the complainant claimed to know nothing about it.

Harrington claims that MCR 6.201(D) applies to require an in-camera hearing because parts of the counseling records were redacted. However, we find this argument misplaced. MCR 6.201(C)(1) specifically states, "*Notwithstanding any other provision of this rule*, there is no right to discover information or evidence that is protected from disclosure" by privilege.[27] Therefore, MCR 6.201(C)(1) directs the Court to MCR 6.201(C)(2).

A defendant's "generalized assertion of a need to attack the credibility of his accuser [does] not establish the threshold showing of a reasonable probability that the records contain information material to his defense sufficient to overcome the various statutory privileges."[28] We conclude that merely arguing that the redacted portions of the counseling reports might contain inconsistent statements, which could be used to impeach the complainant or demonstrate the children's suggestibility, is insufficient. A speculative basis about what the records might contain or how the information might be useful to the defense is not enough to constitute a "good-faith belief, grounded in articulable fact, that there is a reasonable probability that records protected by privilege are likely to contain material information necessary to the defense."[29] Therefore, the trial court did not abuse its discretion in refusing to conduct an in-camera review of the privileged records.

---

[26] MCR 6.201(C)(2) was amended, effective July 1, 1996, as a result of this Court's decision in *People v Stanaway*, 446 Mich 643; 521 NW2d 557 (1994). *Fink*, *supra* at 455 n 7.

[27] Emphasis added.

[28] *Stanaway*, *supra* at 650.

[29] MCR 6.201(C)(2).

VI. Prosecutorial Misconduct

A. Standard Of Review

To preserve claims of prosecutorial misconduct for review, a defendant must timely and specifically object.[30] Because Harrington failed to raise these issues at trial, this Court reviews his claims for plain error affecting his substantial rights.[31] To avoid forfeiture under the plain error rule, Harrington must establish that: (1) an error occurred; (2) the error was plain; (3) and the plain error affected Harrington's substantial rights, i.e., it affected the outcome of the lower court proceedings.[32]

B. False Testimony

Harrington argues in propria persona that the trooper committed perjury and that the prosecutor permitted this misconduct. "The test of prosecutorial misconduct is whether a defendant was denied a fair and impartial trial[,]" i.e., whether prejudice resulted from the alleged misconduct.[33] Prosecutors may not knowingly use false testimony to obtain a conviction, and they have a duty to correct false evidence.[34]

Harrington first claims that the trooper lied and gave inconsistent testimony about a "stop" in the tape of Harrington's interview and that the prosecutor was aware of it. The trooper testified that he began talking with Harrington at 8:35 p.m. and concluded the interview at 10:25 p.m. He recorded the interview from approximately 9:45 p.m. until 10:25 p.m. During the interview, another officer interrupted and informed the trooper that he had a phone call. The trooper stopped or paused the tape recorder and left the room, answered the phone call, placed another, and returned within 10 to 15 minutes. Therefore, the tape only lasts for about 30 minutes. There is therefore no inconsistency about the trooper's explanation, and absent exceptional circumstances, issues of witness credibility are for the jury.[35] "This Court will not interfere with the role of the trier of fact of determining the weight of the evidence or witness credibility."[36] Harrington offers no evidence to suggest that, even if the trooper lied about the "stop" on the tape, the prosecutor was aware of it.

After interviewing Harrington's son and the complainant, the trooper discovered that the recordings were blank because he had not attached or used the microphone correctly. Harrington

---

[30] *People v Ackerman*, 257 Mich App 434, 448; 669 NW2d 818 (2003); *People v Rodriguez*, 251 Mich App 10, 30; 650 NW2d 96 (2002).

[31] *Carines*, *supra* at 762-763; *Ackerman*, *supra* at 448.

[32] *People v Barber*, 255 Mich App 288, 296; 659 NW2d 674 (2003), citing *Carines*, *supra* at 763.

[33] *People v Abraham*, 256 Mich App 265, 272; 662 NW2d 836 (2003).

[34] *People v Lester*, 232 Mich App 262, 276-277; 591 NW2d 267 (1998).

[35] *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998).

[36] *People v Hill*, 257 Mich App 126, 141; 667 NW2d 78 (2003).

offers no evidence to suggest that, even if the trooper lied about the microphone not functioning, the prosecutor was aware of it. Although Harrington claims that the trooper's testimony was inconsistent with testimony from the preliminary examination and *Walker* hearing, these alleged inconsistencies were not raised before the trial court. We therefore find no plain error affecting Harrington's substantial rights.

Harrington next asserts that the trooper lied or presented inconsistent testimony about using certain interview techniques. The trooper testified that he completed a three-day seminar called "Read Interview Interrogation School," but he denied using the "Read method" when interviewing Harrington. However, when asked if he used "anything" he learned, he responded affirmatively, and during cross-examination acknowledged that he used "some things" from that seminar. This inconsistency was presented to the jury, and, absent exceptional circumstances, issues of witness credibility are for the jury.[37] Accordingly, Harrington has failed to show any misconduct that may have denied him a fair and impartial trial.

VII. Sufficiency Of The Evidence

A. Standard Of Review

We review de novo challenges to the sufficiency of the evidence in criminal trials to determine whether, viewing the evidence in a light most favorable to the prosecutor, any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.[38]

B. First-Degree CSC

Harrington argues in propria persona that there was insufficient evidence to sustain his first-degree CSC convictions. The prosecution charged Harrington with two counts of first-degree CSC; count two alleges oral contact with the complainant's vaginal-genital area, and count three alleges contact between the complainant's mouth and his penis.

First-degree CSC involves acts of sexual penetration under the circumstances delineated by the statute, including acts with a person under thirteen years of age.[39] MCL 750.520a(o) defines "sexual penetration" as "sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required." An intrusion into the labia constitutes penetration of the female genital opening under MCL 750.520a(o).[40]

---

[37] *Lemmon*, *supra* at 642.

[38] *People v Randolph*, 466 Mich 532, 572; 648 NW2d 164 (2002).

[39] MCL 750.520b(1)(a).

[40] *People v Bristol*, 115 Mich App 236, 238; 320 NW2d 229 (1981); see also *People v Legg*, 197 Mich App 131, 133; 494 NW2d 797 (1992) (the act of cunnilingus described by the complainant involved penetration because the complainant testified that the defendant touched the part of her body that she "[went] to the bathroom with").

The complainant testified that Harrington licked her vagina. We are not persuaded by Harrington's argument that the act of licking the vaginal area does not constitute cunnilingus. *Random House Webster's College Dictionary* (1997), defines the term "cunnilingus" as "the act or practice of orally stimulating the female genitals." Furthermore, this Court has noted that the term "cunnilingus" is derived from a combination of the word "*connus*" or "vulva," and "*lingere*" or "to lick."[41] We also note that any intrusion, however slight, of any part of a person's body into the genital opening or labia constitutes penetration of the female genital opening.[42] Therefore, viewing the evidence in a light most favorable to the prosecutor, a rational trier of fact could have found that the essential elements of first-degree CSC were proven beyond a reasonable doubt.[43] We therefore conclude that there was sufficient evidence of sexual penetration to sustain one count of first-degree CSC.

The complainant also testified that she licked Harrington's penis or touched it with her mouth, and further explained that Harrington put his penis inside her mouth. Because this constitutes fellatio, there is sufficient evidence to sustain the second count of first-degree CSC.

There is also evidence that digital penetration occurred. The complainant testified that Harrington held a mirror to her vagina and "pull[ed] it open a little bit so that [she] could see the inside." Harrington explained to the trooper that he touched the complainant's vaginal area and "may have touched her on the inside with his thumb and his forefinger as he was opening the lips so she could see on the inside." Even if the cunnilingus or fellatio incidents were not sufficient to sustain one of Harrington's first-degree CSC convictions, this act of Harrington touching the complainant constitutes an intrusion into the labia sufficient to sustain one first-degree CSC conviction.

C. Second-Degree CSC

Harrington contends in propria persona that there was insufficient evidence to sustain his second-degree CSC convictions. The prosecution charged Harrington with two counts of second-degree CSC pertaining to sexual contact with the complainant in counts one and four of the amended felony information. Count five also alleges second-degree CSC, specifically that Harrington either engaged in sexual contact with the complainant or that he aided or abetted his son to engage in sexual contact with the complainant.

Second-degree CSC requires proof that the defendant intentionally touched the complainant's intimate parts if the touching can reasonably be construed as being for purposes of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner.[44] Circumstantial evidence and reasonable inferences arising from the evidence may constitute

---

[41] *People v Harris*, 158 Mich App 463, 469; 404 NW2d 779 (1987); see also *Random House Webster's College Dictionary* (1997).

[42] MCL 750.520a(o); *Bristol*, *supra* at 238; *Legg*, *supra* at 133.

[43] See *Randolph*, *supra* at 572.

[44] MCL 750.520c(1)(a); MCL 750.520a(n); *People v Lemons*, 454 Mich 234, 253; 562 NW2d 447 (1997).

satisfactory proof of the elements of the crime.[45] The complainant explained that Harrington rubbed her vagina with his fingers, and Harrington's son testified that he saw Harrington touch her vagina. This constitutes one incident of sexual contact. The complainant described touching and rubbing Harrington's penis, and Harrington admitted to the trooper that he allowed her to touch his penis. This constitutes a second incident of sexual contact.

The complainant testified that she rubbed her brother's penis at Harrington's direction, and Harrington admitted to the trooper that he allowed her to touch her brother's penis. Harrington's son also recalled the complainant touching his penis when Harrington was present, but during cross-examination, defense counsel confronted him with previous testimony that Harrington was not present when this happened. Harrington's son was not sure if Harrington ever told the complainant to touch him, but defense counsel confronted him with previous testimony that he did not think that had ever happened. However, absent exceptional circumstances, issues of witness credibility are for the jury.[46] This Court will not interfere with the role of the trier of fact of determining the weight of the evidence or witness credibility.[47] Therefore, this incident constitutes a third incident of sexual contact, using an aiding and abetting theory. Lastly, Harrington's son testified that Harrington "made" him touch the complainant's vagina, and Harrington admitted to the trooper that he permitted his son to touch the complainant's vaginal area. This incident constitutes a fourth incident of sexual contact, using an aiding and abetting theory.

Harrington contends that there was no evidence of sexual arousal or gratification. However, MCL 750.520a(n) merely requires that the contact be reasonably construed as being for purposes of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner. Further, because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient.[48] The complainant stated that Harrington's penis would become hard after she rubbed it, and Harrington admitted to the trooper that he sometimes got erections when he was conducting these "sexual education sessions" with the complainant. Harrington also admitted that he instructed the complainant to use hand cream when she touched his son's penis so that it would become erect, which evidences an intent to arouse or provide sexual gratification. The complainant testified that Harrington told her that they would all go to jail if she told anyone, and Harrington admitted that he told the children not to tell their mother about these incidents. After watching "spicey" [sic] or "steamy" movies in the living room, Harrington explained that he and the children would go into the master bedroom because the blinds in the living room were sheer and he did not want the neighbors looking at them while he taught them about sex. These incidents of sexual contact, combined with Harrington's attempts to conceal them, may therefore be reasonably construed as being for purposes of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner. Viewing the evidence in a light

---

[45] *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993); *People v Warren* (*After Remand*), 200 Mich App 586, 588; 504 NW2d 907 (1993).

[46] *Lemmon*, *supra* at 642.

[47] *Hill*, *supra* at 141.

[48] *People v Nasir*, 255 Mich App 38, 45; 662 NW2d 29 (2003).

most favorable to the prosecutor, a rational trier of fact could have found that the essential elements of second-degree CSC were proven beyond a reasonable doubt.[49] Harrington was convicted of three counts of second-degree CSC, and we conclude that there was sufficient evidence to support them.

Harrington maintains that the complainant was unsure that the events ever happened and that the prosecutor "corrected" her answers. At trial, the complainant admitted that the prosecution reviewed her previous testimony and statements with her before she testified. She further admitted that she was told "good job" or that she was "smart" while preparing for the direct examination and answering questions a certain way. Harrington's son admitted that the prosecution helped him "correct" his answers when he was preparing to testify at trial, that he liked to agree with the prosecutor, and that he wanted to "make him happy." However, absent exceptional circumstances, issues of witness credibility are for the jury.[50] This Court will not interfere with the role of the trier of fact of determining the weight of the evidence or witness credibility.[51]

Harrington also contends that he should not have been bound over for trial. However, if a defendant is fairly convicted at trial, no appeal lies regarding whether the evidence at the preliminary examination was sufficient to warrant bindover.[52] If a defendant is convicted at trial, "any subsequent appeal would not consider whether the evidence adduced at the preliminary examination was sufficient to warrant a bindover."[53] Because there was more than sufficient evidence to convict Harrington on all charges, we need not consider whether the bindover was proper.

Affirmed.

/s/ Patrick M. Meter
/s/ William C. Whitbeck
/s/ Bill Schuette

[49] See *Randolph*, *supra* at 572.

[50] *Lemmon*, *supra* at 642.

[51] *Hill*, *supra* at 141.

[52] *People v Matuszak*, 263 Mich App 42, 50-51; 687 NW2d 342 (2004).

[53] *People v Yost*, 468 Mich 122, 124 n 2; 659 NW2d 604 (2003); *People v Hall*, 435 Mich 599, 601-603; 460 NW2d 520 (1990)("such an evidentiary deficiency at the preliminary examination is not ground for vacating a subsequent conviction where the defendant received a fair trial and was not otherwise prejudiced by the error").